

LT EMN AD-HOC QUERY SUMMARY

(for Wider Dissemination)

Calculating 5-year legal residency for long term residents

Background: Lithuanian Migration Department addressed EMN National Contact Points with a query on their experience in issuing a long-term resident's status for the third-country nationals. According to the Council Directive (2003/109/EC of 23 November 2003), long-term resident's status is calculated as 5-year legal and continuous residency term in EU Member State. However, practical methods and means employed for the calculation of the term differs.

Responses were received from 24 countries (AT, BE, BG, CZ, DE, EE, FI, FR, GR, HR, HU, IE, IT, LT, LU, LV, MT, NL, NO, PL, PT, SE, SK and UK). All respondents but IE, NO and UK (the latter three do not take part in this Directive) elaborated on their experience in issuing third-country nationals a long-term resident status.

Methods in practice

- ★ According to the Directive, to be considered for a long-term resident status the applicant needs to have a continuous residence in the MS based on a temporary residence permit for the past 5 years. However, countries proved to adopt rather varied approaches in regard to practices based on which they calculate the 5-year residency term.
- ★ Some responding countries informed that alternative documents proving the legal stay (primarily, entry / exit stamps on the applicant's passport) are widely considered as equally informative or additional indicators. However, in order to further enquire the nature of such stays, the majority of the Member States clarified that they generally tend to reach out for extra sources of information, namely:
 - Border crossing records to determine periods of absence from the country¹ – AT, BE, BG, EE, FR, GR, HU, IT, LT, LV, MT, PL, SE, SK
 - National population and/or foreigners register databases – BE, BG, DE, EE, FR, HR, HU, IT, LU, LT, LV, NL, PL, PT, SE, SK
 - Employment history – LU, MT
 - Interviewing the applicant or (rarely) the witnesses – AT, CZ, PL
 - Alternative documents such as national health insurance (EE), school certificates (FR), proof of regular financial resources (LV), history and terms of payment and other types of benefits obtained (LT), tax declarations (EE, FR), information provided by the applicant himself / herself (SE), etc.

¹ Border crossing records are accordingly used as secondary, not primary source of information.

Long stays outside the country

- ★ In order to be considered for a long-term resident status, a third-country national should stay in a Member State continuously – i.e., without interruptions. Accordingly, if long-term interruption occurs, the calculation of the 5-year period is annulled.
- ★ Nonetheless, a number of responders clarified that short-term stays abroad might be allowed when they remain in compliance with national Member State's policies. For instance, AT, BG, DE, FI, HU, IT and LU permit a cumulative absence that does not exceed 10 months² or one-time leave that is no longer than 6 months. In addition to that, TCNs who are the "EU Blue Card" holders and apply for a long-term resident status³ are allowed a cumulative absence of 18 months or a one-time leave of 12 months in that 5-year period.
- ★ Some countries (AT, LU) also noted exceptional cases (for instance, serious illness, fulfilment of a social obligation or the performance of military or civilian service, pregnancy, childbirth, studies, vocational training, work or diplomatic service-related reasons, etc.), which can grant an applicant an option of up to 12-24 months of absence. In the case of AT the TCN has to notify the authority in advance.

Other examples of practices

- ★ In addition to fulfilling other requirements some countries indicated that an applicant must have a valid residence permit at the time of his/her application for a long-term resident's status.
- ★ During the calculation of the 5-year residence term only half of the regular settlement period is taken into account given the applicant resided in Member State:
 - for study or vocational training purposes (LU, LT)
 - on the basis of temporary residence permit (e.g. for students) or residence permit issued for individual protection (AT)
- ★ In FI long-term resident status can be lost if an alien resided outside the EU territory for 2 consecutive years.
- ★ In Portugal, the issuing of a long-term resident status depends solely on the having valid residence permits for five years; absences do not interfere directly with the attribution of a long-term resident status, but they do interfere with the renewal of the residence permits.

² 300 days in Hungary

³ AT, FI, HU or NL